



July 28, 2020

The Honorable Susan Rubio, Chair
Senate Insurance Committee
State Capitol, Room 2195
Sacramento, CA 95814

RE: AB 2167 (Daly) - **OPPOSED**

Dear Senator Rubio:

Consumer Watchdog is **OPPOSED** to AB 2167 as it provides no relief for California homeowners' and renters' insurance woes and will raise insurance premiums dramatically.

In 1988, California voters passed Proposition 103 to require insurance companies to open their books to public scrutiny and justify homeowners and other forms of property-casualty insurance before insurance companies can raise insurance rates. AB 2167 proposes to *override Proposition 103's statutory protections* against excessive and unnecessary rate increases. AB 2167 would allow insurance companies to *raise homeowners' insurance rates* for all Californians – at a time when they can least afford it.

We urge you to vote NO on this one-sided and deceptively-drafted legislation that:

1. Will lead to immediate rate increases of 40%, plus spikes of 50% or more during and after wildfires.
2. Overrides Proposition 103's protections against price-gouging and discriminatory practices.
3. Strips the Insurance Commissioner of the authority the voters gave him to address emergency conditions in the marketplace and reject unjustified rate increases.
4. Allows insurance companies to shield their finances and loss projections from public and regulatory scrutiny.
5. Conflicts with and therefore is an unconstitutional amendment to Proposition 103: the Legislature does not have the power to authorize rate increases.

AB 2167 (Daly) allows for the circumvention of existing consumer protection and rate regulation powers of the elected Insurance Commissioner. The insurance industry's mantra that "rates will be subject to prior approval" under the bill is an attempt to disguise the reality that, under AB 2167, the voter-enacted statutes and regulations that constitute the prior approval protections under Proposition 103 do not apply. That is like saying the Constitution guarantees freedom but refusing to apply the Bill of Rights and Amendments that enumerate those freedoms and ensure they are extended to all.

Due to the ravages of COVID-19, the legislature is unable to give the usual vetting, discussion and debate that a bill of this consequence requires. Much like the bill that deregulated energy in the 1990's - a similarly complicated bill relating to a consequential issue impacting California consumers that was passed without adequate vetting and understanding - California consumers will be paying the massive costs of AB 2167 for decades to come.

The ensuing rate hikes will escalate the state's already devastating homelessness crisis. Home and condo owners who can no longer afford their insurance premiums will face foreclosure for not maintaining the insurance that is a condition of all mortgage loans. Renters will be priced out of their homes as landlords pass on the cost of increased insurance premiums in the form of rent increases.

AB 2167 is an impermissible attack on Proposition 103 cloaked in proclamations about climate change and wildfires. When they passed Proposition 103, the voters barred the Legislature from amending the initiative unless the amendment furthers the purposes of Proposition 103. AB 2167 does not further the purposes of Proposition 103, but rather undermines it. It must be rejected.

Proposition 103's Protections

During the 1970s and 1980s, insurance companies were free to charge whatever they wanted for insurance. As a result, California's insurance marketplace was rocked with massive swings in the price of home, auto and business insurance premiums that destabilized the economy and created enormous hardship for consumers and businesses. Additionally, insurance companies were free to engage in blatantly discriminatory tactics that punished entire communities.

The voters acted when the Legislature did not. As noted above, Proposition 103 requires any insurance company which seeks to change its rates to submit a rate application to the Insurance Commissioner, and receive the Commissioner's approval for it prior to its use. (Insurance Code section 1861.01 (c).) The rate application must justify the requested rate by showing that it complies with a regulatory formula, issued by the Commissioner that prevents the insurance company from charging rates that are "excessive, inadequate, unfairly discriminatory, or otherwise in violation of" Proposition 103's protections. (Insurance Code section 1861.05 (a)). Discriminatory actions targeting consumers or communities are unlawful. The rate approval process is subject to other Proposition 103 protections. All information submitted by an insurance company to justify a change in its

rates must be made available to the public (Insurance Code section 1861.07); and California consumers may request a public hearing on a rate request. In cases where an insurance company seeks to raise rates by more than 7%, a public hearing is mandatory. The law requires a 180-day review period, but allows extensions, which are often requested by insurance companies. (Insurance Code section 1861.05(c), (d).) Hearings are governed by state laws to ensure fundamental fairness and due process for consumers and insurance companies alike. (Insurance Code section 1861.08.) To ensure that the law was fully enforced, the voters made the commissioner an elective post and accorded the commissioner with full authority to implement the law. (Insurance Code section 12979.) This authority has been upheld by the California Supreme Court and other courts against many legal challenges by the insurance industry.

AB 2167 Dismantles Proposition 103's Protections

AB 2167 explicitly overrides the regulation of rates mandated by the voters:

- Proposed Section 10109.1 creates a new system to replace Insurance Code section 1861.05. It authorizes an insurance company to submit an “Insurance Market Action Plan” that allows the company to seek “adequate rates” and contains a plan to “maintain the insurer’s solvency.” What do these terms mean? Section 10109.3 states that rates must be “actuarially sound”: this is industry jargon for deregulation, since it would allow insurance company actuaries to substitute their judgment for the Insurance Commissioner’s. That is how California insurance law was interpreted prior to the passage of Proposition 103.
- Proposed section 10109.5 (a)(1) mandates an entirely different formula for setting rates. Sections 10109.5 (a)(2) and 10109.6 would allow insurance companies to pass through to consumers the costs of the reinsurance they buy. The Proposition 103 system does not allow insurance companies to do so, because the rates charged by reinsurance companies are not regulated, and in fact many reinsurance companies are subsidiaries.
- AB 2167 requires rates to be approved even if the rate violates other provisions of Proposition 103. (Compare proposed Section 10109.3 with Section 1861.05, which bars rates “otherwise in violation of” Proposition 103.) Indeed, the bill explicitly requires the Commissioner to set aside any “contested issue” “other than a rate calculation” while an insurance company does not have to comply with its “commitments” under the bill if it doesn’t agree with the Commissioner (Section 10109.7).
- Proposed section 10109.5 requires the Commissioner to give these new IMAP applications “expedited review.” Instead of a 180-day review process, AB 2167 would require the Commissioner to fast-track review within 120 days.

In short, AB 2167 would remove Proposition 103’s protections against unjustified rate and insurance company profiteering. And AB 2167 limits the Commissioner’s ability to prevent insurance companies from engaging in exactly the kind of underwriting and other insurance company abuses that are plaguing Californian homeowners.

Notwithstanding, AB 2167's sprawling preamble, the bill does nothing to address climate change, does not require insurance companies to renew homeowners' policies or protect communities in any way against wildfire – or the post-wildfire claims and coverages abuses that have prevented many Californians from rebuilding their homes. AB 2167 is just another attempt by the insurance industry to escape the accountability the voters imposed.

The Commissioner Already Has Emergency Authority to Establish IMAPs.

AB 2167 is not necessary.

When they enacted Proposition 103, the voters understood that insurance companies might periodically threaten to “leave the state” or discriminate against certain communities by refusing to renew policies. Proposition 103 addressed this issue by authorizing the Insurance Commissioner to establish an IMAP to protect the market against such threats:

Emergency Authority

1861.11. In the event that the commissioner finds that (a) insurers have substantially withdrawn from any insurance market covered by this article, including insurance described by Section 660, and (b) a market assistance plan would not be sufficient to make insurance available, the commissioner shall establish a joint underwriting authority in the manner set forth by Section 11891, without the prior creation of a market assistance plan.

As the California Supreme Court noted, “section 1861.11 ‘recognizes the possibility that insurers may withdraw from some insurance markets’ by authorizing the commissioner, in event of substantial withdrawals, to establish a market assistance plan or joint underwriting authority.” (*Travelers Indemnity Co. v. Gillespie*, 50 Cal.3d 82, 105.)

AB 2167 Does Not Further the Purposes of Proposition 103.

Proposition 103 contained the following limitation on the power of the Legislature: “The provisions of this act shall not be amended by the Legislature except to further its purposes by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring[.]”

As the California Supreme Court explained in invalidating another industry sponsored bill to exempt certain insurance companies from Proposition 103:

[T]he voters have the power to decide whether or not the Legislature can amend or repeal initiative statutes. This power is absolute and includes the power to enable legislative amendment *subject to conditions attached by the voters.* (*Amwest Surety Ins. Co. v. Wilson*, 11 Cal.4th 1243, 1251 (1995) (italics in original)).

The Supreme Court made clear that it would not simply defer to the Legislature's determination that an amendment to Proposition 103 "furthered its purposes."

In *The Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354, the Court of Appeal reviewed an amendment sponsored by Mercury Insurance to modify the Commissioner's authority to regulate auto insurance premiums. The Court said:

In enacting Sen. Bill 841, the Legislature sought to override the Insurance Commissioner's authority to set rates and premiums for automobile insurance. ... In providing for an elected rather than appointed commissioner, the voters made the Insurance Commissioner responsive to the voters, not the Legislature. Under Proposition 103, therefore, it is the Insurance Commissioner rather than the Legislature that is vested with ratemaking authority subject to the appropriate ratemaking process. (*Id.* at 1372.)

AB 2167 proposes an unlawful usurpation of the authority California voters have given the Insurance Commissioner.

As an illegal amendment to Proposition 103, the bill will face an immediate legal challenge generating substantial costs to the state.

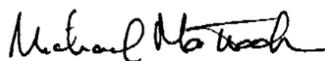
The insurance industry has provided no evidence that the regulatory structure created by the voters is not working, or any justification for replacing it with the costly multi-tiered, new bureaucracy created by AB 2167 and its companion bill, SB 292. The Insurance Commissioner consistently approves all supported requests for rate increases by the insurance companies. Therefore, there is no justification for this latest attempt to eliminate the consumer protections from an over-reaching insurance industry that the public voted for in Proposition 103.

Accordingly, Consumer Watchdog respectfully requests that **AB 2167 be held in committee**, or, in the alternative, **VOTE NO** on the measure.

Best regards,



Harvey Rosenfield, Founder



Michael Mattoch, JD, LLM, MBA
Counsel & Advocate